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Attorney for Plaintiff, Carmen Chavez Cervantez

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

Carmen Chavez Cervantez,

Plaintiff,

v.

Martin O'Malley¹, Commissioner of
Social Security,

Defendant.

Case No. 1:23-cv-01670-GSA

**STIPULATION FOR THE AWARD
AND PAYMENT OF ATTORNEY
FEES AND EXPENSES PURSUANT
TO THE EQUAL ACCESS TO
JUSTICE ACT; ORDER**

IT IS HEREBY STIPULATED by and between the parties through their undersigned counsel, subject to the approval of the Court, that Plaintiff be awarded attorney fees and expenses in the amount of NINE HUNDRED FORTY-SIX DOLLARS and 84/100 (\$946.84) under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), and costs in the amount of zero dollars (\$0.00) under 28 U.S.C.

¹ Martin O'Malley became the Commissioner of Social Security on December 20, 2023. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Martin O'Malley should be substituted for Kilolo Kijakazi as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

1 §1920. This amount represents compensation for all legal services rendered on behalf of
2 Plaintiff by counsel in connection with this civil action, in accordance with 28 U.S.C.
3 §§ 1920, 2412(d).

4 After the Court issues an order for EAJA fees to Plaintiff, the government will
5 consider the matter of Plaintiff's assignment of EAJA fees to counsel. Pursuant to
6 *Astrue v. Ratliff*, 560 U.S. 586, 598, 130 S.Ct. 2521, 177 L.Ed.2d 91 (2010), the ability
7 to honor the assignment will depend on whether the fees are subject to any offset
8 allowed under the United States Department of the Treasury's Offset Program. After
9 the order for EAJA fees is entered, the government will determine whether they are
10 subject to any offset.

11 Fees shall be made payable to Plaintiff, but if the Department of the Treasury
12 determines that Plaintiff does not owe a federal debt, then the government shall cause
13 the payment of fees, expenses and costs to be made directly to Counsel, pursuant to
14 the assignment executed by Plaintiff. Any payments made shall be delivered and
15 made payable to Plaintiff's counsel, Jonathan O. Peña. Additionally, any payment of
16 costs under 28 U.S.C. §1920 may be made either by electronic fund transfer (ETF) or
17 by check.

18 This stipulation constitutes a compromise settlement of Plaintiff's request for
19 EAJA attorney fees, and does not constitute an admission of liability on the part of
20 Defendant under the EAJA or otherwise. Payment of the agreed amount shall
21 constitute a complete release from, and bar to, any and all claims that Plaintiff and/or
22 Counsel including Counsel's firm may have relating to EAJA attorney fees in
23 connection with this action.

24 This award is without prejudice to the rights of Counsel and/or Counsel's firm
25 to seek Social Security Act attorney fees under 42 U.S.C. § 406(b), subject to the
26 savings clause provisions of the EAJA.

27 Respectfully submitted,
28

Dated: April 17, 2024

/s/ Jonathan O. Peña

JONATHAN O. PEÑA
Attorney for Plaintiff

Dated: April 17, 2024

PHILLIP A. TALBERT
United States Attorney
MATHEW W. PILE
Associate General Counsel
Office of Program Litigation
Social Security Administration

By: * Edmund J. Darcher

Edmund J. Darcher
Special Assistant U.S. Attorney
Attorneys for Defendant
(*Permission to use electronic signature
obtained via email on April 16, 2024).

ORDER

Based upon the parties' Stipulation for the Award and Payment of Equal Access to Justice Act Fees and Expenses (the "Stipulation"),

IT IS ORDERED that fees and expenses in the amount of NINE HUNDRED FORTY-SIX DOLLARS and 84/100 (\$946.84) as authorized by the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), be awarded subject to the terms of the Stipulation.

IT IS SO ORDERED.

Dated: April 17, 2024

/s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE